

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHNNY DE LUIS MORELO,

Plaintiff,

v.

DR. MALLYA,

Defendant.

Case No. C15-1266-RAJ-BAT

**REPORT AND
RECOMMENDATION**

Johnny De Luis Morelo, an immigration detainee at the Northwest Detention Center (“NWDC”) in Tacoma, Washington, is proceeding *pro se* in this civil rights action against Ashok Mallya, M.D., a doctor at the NWDC. He alleges that Dr. Mallya has violated his Eighth Amendment rights by providing constitutionally deficient mental health treatment. Dkt. 3.

Mr. Morelo has filed a motion asking the Court to release him from immigration detention or order his transfer to a mental health treatment facility. Dkt. 15. Dr. Mallya did not file a response. The Court construes Mr. Morelo’s motion as one for a preliminary injunction. As discussed below, the Court recommends that Mr. Morelo’s motion be **DENIED**.

DISCUSSION

A preliminary injunction is an “extraordinary and drastic remedy” that is never awarded as of right. *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008) (citations and quotation omitted). A

1 plaintiff seeking a preliminary injunction must establish: (1) he is likely to succeed on the
 2 merits, (2) he is likely to suffer irreparable injury absent a preliminary injunction, (3) the balance
 3 of hardships tips in his favor, and (4) an injunction is in the public interest. *Winter v. Natural*
 4 *Res. Def. Council*, 555 U.S. 7, 20 (2008). A preliminary injunction is also proper if “there is a
 5 likelihood of irreparable injury to plaintiff; there are serious questions going to the merits; the
 6 balance of hardships tips sharply in favor of the plaintiff; and the injunction is in the public
 7 interest.” *M.R. v. Dreyfus*, 663 F.3d 1100, 1108 (9th Cir. 2011) (citing *Alliance for the Wild*
 8 *Rockies v. Cottrell*, 632 F.3d 1127, 1131-32 (9th Cir. 2011)).

9 Mr. Morelo fails to carry his burden under this standard because, at a minimum, he has
 10 not shown serious questions or a likelihood of success on the merits. To establish an Eighth
 11 Amendment violation related to medical care, an inmate must prove “acts or omissions
 12 sufficiently harmful to evidence deliberate indifference to serious medical needs.” *Estelle v.*
 13 *Gamble*, 429 U.S. 97, 106 (1976); *see also Clouthier v. County of Contra Costa*, 591 F.3d 1232,
 14 1241 (9th Cir. 2010). Prison officials may be deemed to have been deliberately indifferent to an
 15 inmate’s serious medical needs “when they deny, delay, or intentionally interfere with medical
 16 treatment.” *Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002) (quoted sources and internal
 17 quotation marks omitted). However, a prison official may be held liable “only if he knows that
 18 inmates face a substantial risk of serious harm and disregards that risk by failing to take
 19 reasonable measures to abate it.” *Farmer v. Brennan*, 511 U.S. 825, 847 (1994). “A ‘serious’
 20 medical need exists if the failure to treat a prisoner’s condition could result in further significant
 21 injury or the ‘unnecessary and wanton infliction of pain.’” *McGuckin v. Smith*, 974 F.2d 1050,
 22 1059 (9th Cir. 1992) (quoting *Estelle*, 429 U.S. at 104), *overruled on other grounds by WMX*
 23 *Techs. v. Miller*, 104 F.3d 1133 (9th Cir. 1997).

1 The indifference to medical needs must be substantial; a constitutional violation is not
 2 established by negligence or “an inadvertent failure to provide adequate medical care.” *Estelle*,
 3 429 U.S. at 105-06; *Anthony v. Dowdle*, 853 F.2d 741, 743 (9th Cir. 1988). Nor does a
 4 difference of opinion between an inmate and medical authorities regarding proper medical
 5 treatment give rise to a civil rights claim. *Franklin v. Oregon, State Welfare Div.*, 662 F.2d
 6 1337, 1344 (9th Cir. 1981).

7 In his motion, Mr. Morelo states that Dr. Mallya offered him “a different medication” for
 8 his schizophrenia, which he declined to take because it had the potential to cause priapism, a side
 9 effect he had previously experienced from psychiatric medication. Dkt. 15 at 1. But the fact that
 10 Mr. Morelo did not wish to take the medication because of a *potential* side effect does not
 11 establish deliberate indifference. Rather, it suggests a mere difference of opinion regarding
 12 proper medical treatment, which is insufficient to prevail on an Eighth Amendment claim. *See*
 13 *Franklin*, 662 F.2d at 1344. Accordingly, Mr. Morelo has not shown that he is entitled to a
 14 preliminary injunction.

15 CONCLUSION AND RIGHT TO OBJECT

16 For the foregoing reasons, the Court recommends that Mr. Morelo’s motion for mental
 17 health treatment, Dkt. 15, be DENIED. A proposed Order accompanies this Report and
 18 Recommendation.

19 This Report and Recommendation is not an appealable order. Therefore a notice of
 20 appeal seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the
 21 assigned District Judge enters a judgment in the case. Objections, however, may be filed and
 22 served upon all parties no later than **December 15, 2015**. The Clerk should note the matter for
 23 **December 18, 2015**, as ready for the District Judge’s consideration if no objection is filed. If

1 objections are filed, any response is due within 14 days after being served with the objections. A
2 party filing an objection must note the matter for the Court's consideration 14 days from the date
3 the objection is filed and served. The matter will then be ready for the Court's consideration on
4 the date the response is due. Objections and responses shall not exceed eight pages. The failure
5 to timely object may affect the right to appeal.

6 DATED this 24th day of November, 2015.

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9 BRIAN A. TSUCHIDA
10 United States Magistrate Judge
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